IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SHOW CAUSE NOTICE NO. 451 OF 2005

WITH

SHOW CAUSE NOTICE NO. 571 OF 2005

WITH

SHOW CAUSE NOTICE NO. 1357 OF 2005

WITH

SHOW CAUSE NOTICE NO. 32 OF 2006

WITH

SHOW CAUSE NOTICE NO. 299 OF 2006

IN

CHAMBER SUMMONS NO. 220 OF 2005

IN

SUIT NO. 1780 OF 1993

M/s. Vijay Enterprises .. Plaintiffs.

vs.

Gopinath Mahade Koli

& Ors. .. Defendants.

Mr. Ashok Bagla i/by Bagla Dandekar &
Co. for plaintiffs.

Mr. Vishal Phal, AGP., for CID.

Mr. Anil Padiyar for Adv. Mohan Kumar K &
Anna P. Contractors in SCN No. 1357/05.

Mr. R.P. Parkar for Cont. Nos. 4 & 5,
Mr Rai & Pawse in SCN 1357/05.

Ms. Sheetal M. Kumar i/by S.D. Naik for
Cont. No. 3 Manoj Kumar Devadiga in
SCN 1357/05.

Mr. Ashok Toraskar for noticee Shankar Kakad Kure
& Sushma S. Newalkar.

Mr. L.R. Castalino Cont. No. 2 in SCN no.229/06
& Cont. No. 1 in SCN No. 451/05.

Mr. S.P. Munghate - Rest. Nos. 1 & for Cont.
Vilas More.

Ramchandra Shankar Kurle, Sushma Newalkar,
Mahadu Lakma Kure, Vilas More, Vithhal Sawant,
Shankar Kakad Kure present in person.

CORAM : S.U. KAMDAR, J.

DATE : 20th April, 2006.

ORAL JUDGMENT :

. In a suit being Suit No. 1780 of 1993 a chamber summons was taken out by one Madhu Lakhma Kakade inter alia seeking relief that the applicant should be added as a party defendant to the suit and the plaintiffs should be directed to serve upon him the suit proceedings. In view of the fact that one of the documents which were used in support of the application being prima facie found to be fabricated document, I directed by my order dated 28.2.2005 the Crime Investigation Department (CID) to conduct an investigation about the genuineness of the documents

annexed as Annexure "I" to the said order. It was further directed that the CID should find out whether any such school exists and whether it had a primary section at the relevant time in the year 1967 and whether the applicant Madhu Lakhma Kakade was a student of such a school. I further directed that the matter be placed on board on 15.3.2005. Thereafter I directed the Chamber Summons to be placed for hearing on 21.3.2005. On 21.3.2005 after hearing the parties and on perusal of the report filed by the CID. I found that the document is a fraudulent document and accordingly I dismissed the Chamber Summons with compensatory cost of Rs. 10,000/- to be paid by the applicant to all the three claimants in the equal share of Rs. 3,300/- each. I further directed issuance of a notice for perjury and contempt and made returnable on 12.4.2005. Pursuant to the said show cause notice, an affidavit was filed by Mahadu Lakhma Kakade in which he furnished his explanation that he is illiterate and he further alleged that Mohankumar K. Advocate and one Anna P. Construction obtained the said school leaving certificate and made him file with his affidavit and he does not even know the contents of his affidavit which was filed with the chamber summons. I thereafter issued a notice of contempt and perjury against those two persons namely, Advocate Mohankumar K. and Anna P. Construction also. Thereafter on the report being

examined I found that various persons are involved in obtaining the said fraudulent certificate and using the same in court proceedings. On the basis of the CID report and the role each party has performed in obtaining the said fraudulent certificate and using the same in Court, I also directed issuance of show cause notice to various persons. In para 3 of my order dated 2.5.2005, I also recorded another disturbing feature that outside the Court room there was a scuffle between two advocates being Mr. Mohankumar K and I.R. Castellino being the erstwhile advocate of Madhu Lakhma Kakad and a new advocate who appeared pursuant to the show cause notice. I had directed the police to take necessary steps in the matter. Thus, by my order dated 2.5.2005 I issued a contempt notice against Madhu Lakhma Kakad as well as Mr. Narsimhan, Sole Proprietor of Annapi Constructions and Mohankumar K. Advocate. Thereafter the CID conducted further investigation and ultimately they filed a report which was taken on record by an order dated 25.7.2005. On receipt of the report, I found that various other persons are also involved in the said conspiracy in obtaining fraudulent document and using the same in Court proceedings. The names which appeared in the report were Ramchandra Shankar Kurle, Shankar Kakad Kure, Manojkumr Shyam Devadiga, B.R. Rai and Anant Balu Pawase. Accordingly, by my order dated 7.10.2005, I also directed the office to

issue show cause notice to the aforesaid persons. I have perused the CID report. In the CID report it has been clearly established that the various persons are involved in obtaining the said fraudulent certificate and using the same in Court proceedings with a view to claim right,title and interest in the suit property. The affidavits which have been filed by the various parties indicate the following picture.

2. Mahadu Lakhma Kakade being the applicant has a brother called Shankar Kakad Kure. These two gentlemen wanted to levy a claim in respect of the suit property and to establish that they were tribals wanted to obtain a fabricated school leaving certificate of Mahadu Lakhma Kakade. It is the case of Shankar Kakad Kure that Manojkumar Shyam Devadiga who is the builder has given him Rs. 500/- and asked him to obtain the certificate. Shankar Kakad Kure in turn asked his daughter who has introduced Shankar Kakad Kure to one Ramchandra Shankar Kurle who is the Kabbadi teacher to obtain the said certificate. The said Ramchandra Shankar Kurle has admitted that he has obtained the said certificate. However he states that he obtained the said certificate from one lawyer Mr. P.R. Patel who is no more and has expired in the month of January, 2005. Significantly this affidavit is filed by him only on 5.4.2006. Thus, in so far as Ramchandra

Shankar Kurle is concerned, he is the person who has obtained the fraudulent certificate and which is not disputed. After obtaining the certificate the said certificate was handed over to Shankar Kakad Kure who has in turn handed it over to Mahadu Lakhma Kakade. These two persons thereafter contacted two brokers namely Pawase and Rai for the purpose of sale of their alleged property and through Pawase and Rai they have contacted one Manojkumar Devadiga. Ultimately a joint development agreement dated 7.5.1984 and various power of attorneys are executed. As far as Manojkumar Devadiga is concerned, he is not disputing the said fact. The learned counsel appearing for him has submitted that he has paid Rs. 60,000/- to Shankar and his family; Rs. 15,000/- to Madhu Kakad, Rs. 3,500/- each to Mr. Rai and Pawase and Rs. 20,000/- to Mohankukar K. Advocate as his fees. All these documents have been produced before me and I have directed the same to be kept in safe custody. After obtaining these documents along with various other documents through brokers Rai and Pawase, Mr. Manojkumar Devadiga has contacted the advocate Mohankumar K. who has been financed by Manojkumar Devadiga and he has prepared the sale proceedings using the said certificate and has filed in the Court. Manoj Kumar Devadigga has however denied making payment of Rs. 500/- to Shankar Kurle for obtaining the said fabricated certificate. In so far as Mohankumar K. is

concerned he has taken a defence that he was not aware while using the certificate that the same is fabricated document. Though he admits that before him two certificates were produced one bearing no. 15 and another bearing no. 98. However, he submits that he did not suspect that the certificate is fraudulent. He submits that he was informed that one is the Xerox copy of the original and the said original certificate having been misplaced the school authorities have issued the second certificate though not mentioned as duplicate. This so called duplicate certificate even had a different serial number. The school authorities have denied having issued any such certificate. The CID report made it clear that the school authorities have never issued such a certificate.

3. In the aforesaid light of the fact it is clear that all these people have jointly together used fabricated document in this Court for obtaining orders from this Court. On the factual position it is clear that fabricated document has been obtained by one Ramchandra Shankar Kurle and has been handed over to Mahadu Lakhama Kakade and Shankar Kakad Kure. Thus, the certificate is thereafter being used by the builder along with the brokers and the lawyer for the purpose of moving an application in this Court.

4. It is no doubt true that Mahadu Lakhama Kakade is illiterate and he is not able to read and write. But he does not dispute that he has executed joint development agreement and the general power of attorney in favour of Manojkumar Devadiga. He also does not dispute that he has received the amount under the said agreement.

5. I have also perused the CID report which has been filed on record which is in detail and even during the CID investigation as mentioned in the report the aforesaid facts have been clearly established.

6. Though normally the Court of Law being the Court of Justice also would take a liberal approach, when it comes to the question of contempt of court and on occasions by accepting the apology the matter is put to rest. But I am of the opinion, that now the time has come when the litigants are utilizing the fabricated documents rampantly. Now the time has also come where people are making statements on oath and in court proceedings which are blatantly false to their own knowledge. Now a days parties are using false documents with a view to achieve orders which they desire to obtain. It is needless to state that justice delivery system has to be pure and should be such that the persons who are approaching the Courts and filing the proceedings

must be afraid of using fabricated documents and also of making false statements on oath. We are a Court of Law sitting here to ascertain the truth and give justice in accordance the law to establish truth and not being misled by the advocates and the parties in the various directions so as to make it almost impossible to give effective and truthful justice to the litigants at large. In my opinion keeping in mind the aforesaid position it is high time that where the people have blatantly used the fabricated document for the purpose of achieving the desired result even by misleading the Court and/or by making false statement and by using fabricated documents cannot escape the penalties. This is an unfortunate case before me where the persons who have used the certificate are illiterate. There are people who are behind them are powerful. But they are taking shelter behind the fact that the certificate has been brought to them by those illiterate persons. In spite of the aforesaid it has been established on the record not only the three persons have obtained the fabricated document but the builder and brokers and the lawyer have all conscientiously utilised the said certificate knowing fully well that the said certificate is fabricated. Firstly because all of them knew that there are two certificates produced one bearing no. 15 and another bearing no. 98. The builder, the brokers and the lawyer not being literate and having

resources before entering into the agreement and filing the proceedings in the Court ought to have ascertained and verified the veracity of the said document. But admittedly they have not done so before using the said document in the Court proceedings. This is not a mere lapse but the fact is that the fabricated document has been consciously used by the said persons. In that light of the matter, I am of the opinion that each of the aforesaid persons are guilty of using fabricated document in the Court proceedings and are consequently guilty of contempt of court. I am also of the opinion that utilising the fabricated document in the court proceedings amounts to interference with the administration of justice and thus attracts the liability of contempt. In effect, it is the builder and the brokers who have been on investigation found to be the real persons in moving an application through an illiterate person Mahadu Lakhama Kakade to utilise the said certificate. Though the application was in the name of Mahadu Lakhma Kakade, in fact by virtue of the joint development agreement the real beneficiary was Manojkumar Devadiga as he was entitled to develop the said property. I am of the view that this is a fit case where action must be taken and in that light of the matter, I am proposing to pass the following order :-

i) I hold Mr. Ramchanda Shankar Kurle guilty of contempt of this Court under section 2 (b) read with Article 215 of the Constitution of India and sentence him to simple civil imprisonment for the period of one month and a fine of Rs. 1500/-

ii) I hold Mr. Mahadu Lakhma Kakade guilty of using the said school leaving certificate in chamber summons initiated by him and accordingly I also hold him guilty of contempt of this Court under section 2 (b) read with Article 215 of the Constitution of India and sentence him to simple civil imprisonment for the period of one month and a fine of Rs. 1500/-

iii) I also hold Mr. Shankar Kakad Kure guilty of obtaining the said fabricated certificate and actively utilising the same in court proceedings and and sentence him to simple civil imprisonment for the period of one months and a fine of Rs. 1000/-

iv) In so far as Mrs. Shushma Sachin Newalkar is concerned, I discharge the show cause notice as against her. I discharge the show cause notice keeping in mind that she is a woman

and having not played any role in obtaining the said certificate or utilising the same.

v) I further hold the builder Manojkumar Devadiga guilty of utilising the fabricated document in the court proceeding by obtaining the same from Mahadu Lakhma Kakade and entering into agreements with him and consequently engaging the lawyer, financing the lawyer and using the said certificate in a Court proceedings and I sentence him to a fine of Rs. 1000/-.

vi) In so far as the brokers, Mr. B.R. Rai and Anant Balu Pawase are concerned, I find that they have played the role in obtaining the certificate and in obtaining the documents from Mahadu Lakhma Kakade and Shankar Kakad Kure and introducing them to the builder and handing over the documents to the said builder. I sentence each one of them to a fine of Rs. 1000/- each.

vii) In so far as Mohankumar K. is concerned, I find that he is an advocate and he should have taken sufficient steps before utilising any document and on finding that the two documents are produced before him both of the same date and at different numbers, it was

expected of him of being diligent in the matter. However, keeping in mind that he has tendered an unconditional apology, I discharge the show cause notice against him. However, I am issuing a warning to him for two reasons. Firstly, being not diligent in utilising the document in the court proceedings and for the reason in entering into a behaviour of not befitting of an advocate and having entered into a scuffle with the fellow brother advocate outside the Court Room. However, in the light of the fact that he has filed an affidavit giving an unconditional apology, I discharge the show cause notice against the said Advocate Mohankumar K.

viii) In so far as Mr. Narsimhan of Anna P Construction and Mr. Vithhal Atmaram Sawant is concerned, I find that there is no role played by them in either obtaining or utilising the fabricated school leaving certificate and accordingly I discharge the show cause notice as against them.

ix) All the show cause notices are disposed of accordingly. However, it will not be out of place to express the word of appreciation for the Senior Inspector of Police, DCB, CID,

Unit-VII, Ghatkopar, Mumbai, who has acted efficiently by firstly carrying out the effective investigation in the matter and thereafter attending the court and ensuring the presence of each of the contemnors in the Court who are otherwise not accepting the show cause notices issued as against them. However, in so far as Mohankumar Shyam Devadiga is concerned, he is directed to pay costs of the present proceedings which is quantified at Rs. 10,000/- payable to Maharashtra State Legal Services Authority within two weeks.

. The imprisonment sentence imposed on Mr. Ramchandra Shankar Kurle, Mr. Mahadu Lakhma Kakade and Shankar Kakad Kure, is suspended for a period of 8 weeks from today.